

ILLINOIS POLLUTION CONTROL BOARD
May 11, 1995

R.P. LUMBER COMPANY, INC.,)
)
 Petitioner,)
)
 v.)
)
)
OFFICE OF THE STATE)
FIRE MARSHAL,)
)
)
 Respondent.)

PCB 94-184
(UST - Fund)

ORDER OF THE BOARD (by M. McFawn):

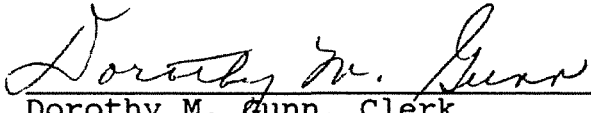
This matter is before the Board pursuant to petitioner R.P. Lumber Company, Inc.'s, May 1, 1995 motion for summary judgment accompanied by a motion for leave to file instanter. On May 5, 1995 respondent, Office of the State Fire Marshal, filed a response to the motion for leave to file instanter and on May 8, 1995 petitioner filed a motion to continue hearing.

Pursuant to Board procedural rule 35 Ill. Adm. Code 107.227, a party may move the Board for summary judgment on all or any part of the relief sought no less than 21 days prior to scheduled hearing. Hearing in this matter had been scheduled to commence on May 15, 1995. Although petitioner actually mailed its motion for summary judgment on April 26th, twenty days before hearing, it is nevertheless one day late and therefore untimely.

Respondent has not cited any material prejudice which would result if petitioner's motion to file instanter is granted. The Board finds that no prejudice will result if the motion for summary judgment is accepted; the hearing officer has already cancelled the hearing set for May 15, 1995. The Board hereby grants petitioner's motion to file instanter and accepts petitioner's motion for summary judgment. Respondent is hereby given fourteen days from the date of this order to file a response to petitioner's motion for summary judgment.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 11th day of May, 1995, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board